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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES LIGHT PERKINS,

Defendant and Appellant.

A154529

(Lake County Super. Ct.
No. CR941411)

Defendant Charles Light Perkins appeals from his state prison sentence, imposed after he pleaded no contest to multiple charges stemming from a January 2016 dinner date that ended in a violent altercation. Perkins’s sole argument on appeal is that the trial court violated Penal Code¹ section 1170.9 by failing to consider his status as a United States military veteran suffering from posttraumatic stress disorder (PTSD) as a mitigating factor at sentencing. We disagree and affirm.

I. BACKGROUND

In January 2016, Perkins, a decorated veteran of the United States military, went out to dinner with N.V. Later that evening, after N.V. rebuffed his sexual advances in her home, Perkins—who had been drinking throughout the evening—became agitated. He grabbed her semiautomatic pistol off the top of her dresser, held the barrel to her temple, and threatened to kill her, pulling the trigger at least three times. Although she believed the firearm was unloaded, N.V. described being “ ‘terrified.’ ” Perkins did not know whether the gun was loaded when he acted. After placing the firearm to his own head

¹ All statutory references are to the Penal Code unless otherwise specified.

and pulling the trigger approximately three times, Perkins jammed the pistol back into N.V.'s forehead, yelling: “ ‘Do you want to kill me, you fucking bitch!’ ” Perkins then punched holes in N.V.'s walls and threw a glass table across the room into several glass shelves, causing them to shatter.

N.V. was able to run past Perkins and escape to a neighbor's house where she called the police. In the meantime, Perkins took N.V.'s keys, cellphone, and firearm, got into her vehicle, and drove away. Sheriff deputies eventually located Perkins by tracking N.V.'s cellphone. He was intoxicated when they arrested him, yelling that he was a veteran and deserved more respect. N.V.'s damaged vehicle was located nearby. Her firearm was discovered in Perkins's backyard several days later.

The Lake County District Attorney filed an amended complaint charging Perkins with making criminal threats (§ 422, count 4), unlawful taking of a vehicle (§ 10851, subd. (a), count 5), vandalism (§ 594, subd. (a), count 6), and petty theft (§ 484, subd. (a), count 7), attempted murder (§§ 187, subd. (a), 664, count 1), assault with a semiautomatic firearm (§ 245, subd. (b), count 2), assault with a firearm (§ 245, subd. (a)(2), count 3); counts 1, 2, and 3 included a special allegation of personal use of a firearm. An information was filed in April 2016 conforming to the amended complaint. In February 2018, Perkins pleaded no contest to counts 4 through 7 pursuant to an open plea agreement. Counts 1 through 3 were dismissed.

At the sentencing hearing on May 29, 2018, the trial court sentenced Perkins to three years eight months in prison, consisting of a three-year upper term for count 4 and an eight-month consecutive sentence for count 5. The two misdemeanor convictions (counts 6 & 7) were sentenced to run concurrently. Although the trial court noted that it was “generally quite sympathetic” to veterans such as Perkins, the court found that the aggravating factors in this case—particularly the brutal nature of Perkins's conduct—“clearly” outweighed those in mitigation. This appeal followed.

II. DISCUSSION

Section 1170.9 grants certain criminal defendants who have served, or are serving, in the United States military a “special veteran status”: “In the case of any person convicted of a criminal offense who could otherwise be sentenced to county jail or state prison and who alleges that he or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the United States military, the court shall, prior to sentencing, make a determination as to whether the defendant was, or currently is, a member of the United States military and whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her service. The court may request, through existing resources, an assessment to aid in that determination.” (§ 1170.9, subd. (a).) If the court concludes that a defendant is entitled to special veteran status, “and if the defendant is otherwise eligible for probation, the court shall consider the [defendant’s special veteran status] as a factor in favor of granting probation.” (*Id.*, subd. (b)(1); see *id.*, subd. (d).) The court shall also consider special veteran status as a mitigating factor when imposing the upper, middle, or mitigated term at sentencing under subdivision (b) of section 1170. (§ 1170.91, subd. (a).)

Sentencing decisions are reviewed for abuse of discretion. (*People v. Sandoval* (2007) 41 Cal.4th 825, 847.) The burden rests with the party attacking the sentence to show such abuse. (*People v. Superior Court (Alvarez)* 14 Cal.4th 968, 977; *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1157 [“A defendant who is denied probation bears a heavy burden to show the trial court has abused its discretion.”].) A single valid reason articulated by the trial court is sufficient to justify a sentencing decision. (*People v. Dancer* (1996) 45 Cal.App.4th 1677, 1696, disapproved on another ground in *People v. Hammon* (1997) 15 Cal.4th 1117, 1123; *Sandoval*, at p. 848 [trial court “is free to base an upper term sentence upon any aggravating circumstance that the court deems significant,

subject to specific prohibitions”]; *Mehserle*, at pp. 1157–1158 [while a sentencing court must state its reasoning for denying probation, reliance on a single factor such as “the ‘ “nature and seriousness of the offense” ’ is sufficient”]; see *People v. Ferguson* (2011) 194 Cal.App.4th 1070, 1093 (*Ferguson*) [upholding denial of probation in a § 1170.9 case where severity of crime and input from victims’ friends and family rendered probation inappropriate].)

Perkins argues on appeal that sections 1170.9 and 1170.91 were not properly applied in this case. Specifically, he claims the trial court erred by failing to make an express determination with respect to his special veteran status prior to sentencing, by failing to make express findings with respect to that status when imposing sentence, and by failing to consider his special veteran status as a mitigating factor favoring probation. The record, however, belies these assertions.

Within a week of the January 2016 filing of the initial complaint in this matter, defense counsel filed Judicial Council form MIL-100 with the trial court, indicating that Perkins was a veteran, alleging that he fell within the provisions of section 1170.9, and requesting an assessment and determination regarding his eligibility prior to sentencing. A Veterans Treatment Court (Veterans Court) representative first appeared in court shortly thereafter, requesting that Perkins be referred to Veterans Court. In February 2016, the trial court made a referral to Veterans Court to determine program eligibility and also referred the case to the Lake County Probation Department (Probation) for preparation of an eligibility assessment and recommendation. In the interim, Probation filed a bail status report with the court which noted Perkins’s assertion that he had been a member of the United States military from 2000 to 2011 and received veterans’ benefits for military-related disabilities. Although Perkins was not eligible for probation based on the charges then pending, the report indicated that he might be eligible for Veterans Court should he become eligible for probation.

In March 2016, Probation filed a supplemental report summarizing military records it had received which described Perkins's military service and mental health issues. Perkins had been in both the Army (2009) and the Navy (2000-2008) and had six deployments, with exposure to numerous improvised explosive devices and rockets.² He was first diagnosed and treated for anxiety and PTSD while on active duty and has a "100% service connection disability regarding his PTSD." Speaking expressly with respect to section 1170.9 eligibility, Probation opined that "[t]here appears to be a nexus from the PTSD diagnosis the defendant received from his combat exposure[] and his current violations." Probation concluded that Perkins "appears to be a good candidate for Veterans Court." Nevertheless, the trial court was informed that same month that Perkins was ineligible for the Veterans Court program due to the firearm charges he faced.

Once Perkins entered a plea on February 2, 2018, resulting in dismissal of the firearm charges, his case was immediately re-referred to Veterans Court to determine program eligibility and to Probation for preparation of an eligibility assessment and recommendation. Probation submitted a report restating Perkins's military and mental health history and noting that Perkins was "determined to be eligible for Veteran[s] Court based on the nexus between his experiences through the military service and the circumstances of the present offense." On February 7, 2018, the trial court read and considered the report. The minute order for that date reflects that the Veterans Court treatment team had assessed Perkins and found him to be an appropriate and eligible candidate for Veterans Court.

Prior to sentencing, Perkins submitted a statement in mitigation to the court. Among other things, the statement described Veterans Court as a sentencing alternative which provides closely supervised probation and rehabilitative programming for eligible veterans, reiterated that he had been found eligible, and cited section 1170.9's mandate

² In an Iraq deployment, for instance, Perkins spent nine months at a combat zone checkpoint where he looked for "bombs in and under native Iraqi cars all day every day."

that his special veteran status be considered by the court in determining whether to place him on probation. Attached to the statement in mitigation were Veterans Administration materials again documenting Perkins's military service and struggle with PTSD.

Probation's presentencing report, however, recommended that probation be denied. Perkins had a prior conviction for criminal threats in 2010 stemming from an argument with funeral home personnel during which Perkins exclaimed that he was in the military and " 'killed people for a living' " and yelled as he was leaving that he would come back to kill them. In 2012, he was charged with cutting an electrical utility line when his then wife, fearing for her safety and that of their two sons, attempted to call 911 and he pulled the phone wires out of the side of their residence. Perkins also had active warrants in Florida, Virginia, and Oregon for failing to appear with respect to traffic, driving while intoxicated, and harassment charges. He had a history of alcohol and substance abuse as well as a long history of problematic relationships. The report concluded that Perkins was a poor candidate for probation in that he did not appear remorseful, had a history of ignoring court orders, and appeared to be a substantial danger to the community. It further recommended the upper term for his criminal threats conviction, noting numerous aggravating factors and only his mental health condition in mitigation.

At the sentencing hearing in May 2018, the trial court noted it had read and considered Perkins's statement in mitigation. A Veterans Court representative reiterated to the court that Perkins was eligible for Veterans Court and stated that, since the program was treatment-based, participants needed to be out of custody. The prosecutor argued for denial of probation. Acknowledging that Perkins's PTSD was a factor in mitigation, the prosecutor questioned the sincerity of his willingness to participate in treatment given that he had remained untreated since his 2008 diagnosis and had told the probation officer that he did not believe he benefitted from treatment. Defense counsel,

in contrast, relied on Perkins's exemplary military service and argued for a sentence that would allow him to obtain treatment for his PTSD.

Citing numerous facts relating to both the crime and Perkins's prior behavior, including the serious circumstances of the crime and his prior criminal history, the court stated that it was "clear" Perkins was not an appropriate candidate for probation. The court then went through the aggravating and mitigating sentencing factors as set forth in the probation report, including the mitigating factor that Perkins "may be suffering from a mental condition." The court observed, "I'm generally quite sympathetic to veterans and the people who have honorably served this country. That doesn't give him the right to brutalize people around him, which is clearly what he's been doing. [¶] As I indicated, probation is denied. Clearly, the aggravating factors outweigh those of mitigation." The court then sentenced Perkins to state prison as set forth above.

It cannot seriously be argued on this record that the trial court was unaware either of Perkins's special veteran status or of its discretion to impose a mitigated sentence based on that status under appropriate circumstances. As section 1170.9 allows, the court requested an assessment of Perkins "through existing resources" to aid in its determination of Perkins's status (§ 1170.9, subd. (a)) and impliedly accepted the Veterans Court's conclusion with regards to Perkins's eligibility. Indeed, the evidence of Perkins's special veteran status was uncontroverted and a matter of focus and discussion in Probation's eligibility assessments and presentencing report. Further, prior to sentencing, the trial court read and considered defense counsel's statement in mitigation, which requested probation in accordance with section 1170.9, and heard argument from both sides regarding whether mitigated sentencing was appropriate in light of Perkins's service-related PTSD. Although our First District has previously held that "[a]n intelligent exercise of discretion [under section 1170.9] cannot be inferred from a silent record" (*People v. Bruhn* (1989) 210 Cal.App.3d 1195, 1200), this record is far from silent. Perkins's special veteran status permeated this case from its inception, and the

court's expression of sympathy to "veterans and the people who have honorably served this country" and acknowledgement that Perkins "may be suffering from a mental condition" make clear that those mitigating considerations were at the forefront of the court's sentencing determination. But the trial court concluded, and the record amply supports, that the aggravating factors "clearly" outweighed those in mitigation. We see no abuse in the court's exercise of discretion.

The Legislature has expressed "strong concern" that "emotionally affected . . . veterans be afforded every opportunity to get meaningful rehabilitative treatment in a [program] specifically designed to deal with their unique and complex disorder." (*People v. Ruby* (1988) 204 Cal.App.3d 462, 468.) The Legislature has also made clear, however, that its intent in enacting section 1170.9 was not "to expand probation eligibility" but rather " 'to ensure that judges are aware that a criminal defendant is a combat veteran with these conditions at the time of sentencing and to be aware of any treatment programs that exist and are appropriate for the person at the time of sentencing *if a sentence of probation is appropriate.*' " (*Ferguson, supra*, 194 Cal.App.4th at p. 1093; see Stats. 2006, ch. 788, §§ 1(f), (1)(g).) The statutory purpose was accomplished here, as the trial court was plainly aware of and gave consideration to Perkins's special veteran status and the alternative sentencing options available to him. It nevertheless declined to offer him a mitigated sentence. Nothing more was required.

III. DISPOSITION

The judgment is affirmed.

Sanchez, J.

WE CONCUR:

Humes, P. J.

Banke, J.